

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 6TH DAY OF NOVEMBER, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/BW/CV/181/20

BETWEEN:

1. MR. CHUKWU ERASMUS NZUBE.....CLAIMANT/APPLICANT

AND

1. MR. ABDULLAHI AHMED RESPONDENTS

2. RASAK IBRAHIM

RULING

On the 21/1/20 the Plaintiff Chukwu Erasmus Nzube instituted this action against the Abdullahi Ahmed and Rasak Ibrahim. On the 6/10/20 the Plaintiff amended his Claim. In the said amended claim he claims the following reliefs:

1. That the acts of the Defendants by trespassing into the Plots NO.1194 of about 750 sqm in Dawaki Relocation Layout, in possession of the Claimant to cause damages amount to trespass.
2. A Declaration that the Claimant who is in possession of the land and is entitled to enjoy same.
3. An Order of Injunction restraining the Defendants, their agents, their privies and whosoever deriving authority

from them from further trespassing into the land herein after called the Res.

4. ~~N~~5, 000,000.00 (Five Million Naira) as general damages.
5. Cost of the Suit.
6. Omnibus prayer

In Order to preserve the Res the Plaintiff filed an Interlocutory application restraining the same Defendants their privies cronies, agents from further trespass into the Res pending the final determination of this Suit. The motion is supported by an Affidavit of 21 paragraph deposed to by the Applicant in person. In the written address he raised an issue for determination which is:-

“Whether the Respondent ought not to restrained in the interest of Justice from doing anything whatsoever in relation to the property in dispute in a manner adverse to the interest, right or claim of the Claimant/Applicant pending the final determination of the substantive Suit?

Counsel on his behalf submitted that the applicant has placed sufficient materials to warrant Court to grant the Injunction. He referred to the case of:

LEASING CO. LTD Vs TGER IND. LTD (2007) 3 NWLR (PT1054) 346 @ 349-50

Where Court held that grant of Interlocutory application is at the discretion of the Court. He cited the laid down principles which the Court considers in grant or refusal of an application like this. He cited the following cases:

OBEYE MEMORIAL Vs AG Federation (1987) 3 NWLR (PT60) 325 @372

KOTOYE Vs CBN (1989) NWLR (PT98) 18@22

ACB Vs AWOGBORO (1991) 2 NWLR (PT176) 711 @ 713

He submitted that by the facts in the Affidavit and the Document attached the Applicant has serious issues to be determined which is allegation of trespass against the Defendants/Respondents. That the plaintiff is laying Claim to the Res and the Defendants are doing same. That there is need to determine the ownership of the Res. He referred to the case of:

OYEYEMI Vs IREWOLE LGA (1983) 1 NWLR (PT270) 462

That in Paragraph 1-21 of his Affidavit he has shown that he has a legal right of possession of the immovable property, which is threatened and /or already interfered with by the Defendants. That he has shown ownership in paragraphs 1-14 of the Affidavit and through the documents attached. That he has a right and the said right is threatened by the Defendants. That this Injunction is necessary in Order to refrain the Respondents from tampering with the Res pending the determination of the substantive Suit. They urge Court to Order that Status Quo is maintained pending the determination of the Suit. He referred to the cases of:

OBEYE MEMORIAL Vs AG Federation Supra.

Gov. of Lagos State Vs Ojukwu (1985) 1 NWLR (PT18) 621

That balance of convenience is on his part and in his favour. That if the Respondent is not restrained the will suffer injury which will not be adequately compensated. He referred to the case of:

AGBAKOBA Vs DIRECTOR DSS (1994) 6 NWLR (PT351) 490 R 2

That damages will not be adequate for what he will suffer. If the Injunction is not granted. He referred to case of:

ACB Vs AWOGBORO VEE GEE (NIG)

That the conduct of the Applicant is not reprehensible as shown in the Affidavit. He also undertook to pay damages if the application is frivolous. They urge Court to look at the process of all the parties in this suit and hold that he has placed sufficient materials before this Court to warrant the grant of the Application.

The 1st Defendant did not file any counter Affidavit. Upon receipt of the Motion the 2nd Defendant filed a counter-Affidavit of 21 paragraphs. In the written address they raised an issue for determination which is:

“Whether the Court can grant the Injunction for already completed act”

The 2nd defendant submitted that the Court has the discretion to grant or refuse an Injunction judicially and judiciously. Following the laid down principles- existence of triable issue, Legal Right on the issue, damages as adequate compensation, balance of convenience on Applicants side and his conduct not being reprehensible and Applicant undertaking to pay damages as stated in the time-honoured case of:

OBEYE MEMORIAL & ANOR Vs AG Federation (1987) 3 NWLR (PT60) 325

That once an act has been completed no Order to restrain can be made as what you sought to prevented has in fact happened. He referred to the case of:

JOHN HOLT NIG & CAMEROONS Vs JOHN HOLT AFRICAN WORKERS UNION OF NIG & CAMEROONS (1963) 1 ALL NLR 385 @ 390

That in the case the Res is already a completed Building with few tenants occupying same long before the contemplations of the

complaints intent to grab the Res and the filing of this suit. That he is peaceful and

“... is ready to abide by the decision of the court whether interim or in its absolute stand”

The above is as stated in paragraph 5.6 of the written address in support of the Counter Affidavit. That Applicant failed to show that balance of convenience is on his part. He had also shown that the injury he will suffer if the application is not granted, unlike the Respondents who will be rendered homeless having made effort and expended millions of Naira on the Res. Also that Applicant failed to get to Court on time in that he delayed in filing the present action in order to get an Injunction to restrain the defendant from developing the Res. Instead he resorted to the use of Police.

That he has shown that he can be compensated. That is payment of damages is adequate compensation for him. That granting the Injunction will occasion un tolled hardship on the Defendants now after they have expended money to develop the Res. That the Applicant delayed in instituting this action that defendant should not be meant to suffer for the Plaintiff's indolence. Rather parties should set out the Judgment of the case in the main suit.

That there is nothing to show that applicant will suffer any loss or any irreparable loss in this case at this stage. That his Affidavit failed to disclose he will so suffer. He referred to the case of:

WEBBER EGBE Vs PETER C.A. ONOGUN (1972) 1 ANLR 99.

That 2nd Defendant is the one who will lose if the Order is granted. That there is lack of urgency to warrant the grant of the application and that Applicant did not show or demonstrate any urgency to

warrant the grant of the Injunctive relief sought. He referred to the case of:

CASARE MISSINI & ORS Vs MICHEAL BALOGUN & ANOR (1968) ALL NLR 310

AJEWOLE Vs ADETIMO 3 PLR 1996 SC 19

UKET Vs FRN (2008) ALL FWLR (PT411) 923 CA

He urged the Court to refuse the application as it is targeted at mood winking the Defendants.

COURT:

Once there is a dire need to save the Res from being damaged or destroyed before the final determination of issue in the substantive suit the Court will halt to listen to the party who has raised that issue and where it is meritorious will grant the Injunctive Order as sought. Where the Court feels otherwise, it will not grant same. The case of Obeya Memorial had set out the principle which the Court must consider before it can grant or refuse to grant such injunctive Order. But whatever is the stance of the Court it will be judicially and judiciously exercise its discretion in that regard. This is more so if the Applicant has through his Affidavit shows that balance of convenience is on his part that he has legal right on the issue in dispute and damage not adequate compensation and that there is no delay in filing the Suit and had pledged to pay damages if the application is found to be frivolous, among other facts. That is the Court decision in the case of:

OBASANJO Vs MOHAMMADU BUHARI

In this case the Plaintiff claims that the Res will be destroyed if the Order is not granted before the Final determination of the main suit.

The Defendant feels otherwise stating that he the 2nd Defendant will suffer if injunctive order is granted as he has expended millions of Naira in developing the said Res. And that compensation will be adequate for the Applicant who he claimed delayed the filing of the suit among other reasons.

The Applicant also want Court to delve into the main suit without granting the relief. The question is should this Court refuse the grant of the Reliefs as the 2nd Defendant is saying or should Court grant same as the Applicant is praying. Again should a party lose his right to seek for an injunctive order just because he did not start to sue on time as the 2nd Defendant claim?

Since the case is not statute barred, is there a time limit within which a party can claim his right and seek for injunctive relief pending determination of the substantive suit? Has the Plaintiff been able to show that there is dire need to preserve the Res by the grant of this application?

Not taking the question seriatim it is the humble view of this Court that there is dire need to grant the injunctive Order maintaining status quo pending the Final determination of the issue in dispute. Again the Plaintiff had been able to show that balance of convenience is in his favour and that the Res may be destroyed before the final determination of the substantive suit. This is because the Defendant may sell the Res to another person before the final determination of the main suit or ever change its form totally. Again there is no time limit within which a party can claim his right and file for an injunctive Order. Also this suit is not statute barred from all indication. There is no doubt that the Plaintiff has or alleged he has the ownership of the Res. The Defendants are claiming same ownership, where the plaintiff is alleging the Defendants have

trespassed. There is a very legal issue in dispute which is the ownership of the Res. There is therefore need to protect and preserve the Res at this stage. The Plaintiff has shown through his Affidavit and written Address that there is need to preserve the Res. This court believes him.

Most importantly the 2nd Defendant on their own has in paragraph 5.6 of their written address stated thus:

“As law abiding citizens the Defendants are peaceful and are ready to abide by the decision of the Court whether interim or in its absolute stand.”

The above settle it. It is the decision of this Court that the parties should stay clear and maintain status quo pending the determination of the substantive Suit. This application is meritorious and it is therefore granted. This is the Ruling of this Court. The Court also suo motu Order that for accelerated Hearing of the Suit too.

This is the Ruling of the Court.

Delivered today the _____ day of _____, 2020 by me.

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K.N.OGBONNAYA
HON.JUDGE